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No. 03-5165

Supreme Court, U.S.
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In The Supreme Court of the United States

MARCUS THORNTON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF FOR THE STATES OF ARIZONA, ALABAMA, DELAWARE, FLORIDA, HAWAII, ILLINOIS, INDIANA, KANSAS, MARYLAND, MICHIGAN, MISSOURI, MONTANA, NORTH DAKOTA, OKLAHOMA, OREGON, SOUTH CAROLINA, TEXAS, UTAH, VERMONT, VIRGINIA, AND WYOMING AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF THE AMICI STATES

Thornton's case presents an issue of considerable importance to the undersigned States, whose vehicle search procedures incident to an occupant's arrest reflect this Court's interpretation of the Fourth Amendment. To ensure officer safety and prevent the destruction of evidence when arresting a vehicle's occupant, law enforcement officers regularly search the vehicle incident to arrest under *New York v. Belton*, 453 U.S. 454 (1981). These interests, along with the safety of the public, would be compromised if this Court adopted Thornton's proposed rule. His rule requires officers to (1) warn the suspect of their presence before he exits the vehicle and (2) formally arrest him while he is within "reaching distance" of the vehicle, even if he flees.

The proposed rule is unworkable and dangerous. Thus, the States have a strong interest in having this Court uphold the decision of the United States Court of Appeals for the Fourth Circuit, which held that Thornton's close spatial and temporal proximity to his vehicle at the time of his arrest, without more, justified searching his vehicle under *Belton*. *United States v. Thornton*, 325 F.3d 189, 196 (4th Cir.), *cert. granted*, 124 S. Ct. 453 (2003).

STATEMENT OF THE CASE

A uniformed police officer in an unmarked vehicle began to follow Thornton's car, intending to stop the car due to a discrepancy between its license plate and make and model. JA 9-10, 31, 62. But before the officer "had a chance" to initiate a stop, Thornton pulled into a parking lot and got out of the car. *Id.* The officer immediately

pulled in behind him and approached him on foot, asking for his driver's license and telling him that his tags did not match the registered vehicle. *Id.* As a result of a consensual pat-down and Thornton's voluntary relinquishment of the cocaine and marijuana that he carried in his pockets, the officer immediately arrested him. After securing Thornton in the police vehicle, the officer searched his car and found a pistol under the driver's seat. *Id.* at 11, 32, 63.

The trial court denied Thornton's pretrial motion to suppress the gun, finding that the vehicle search was legal on two independent grounds: as a search incident to Thornton's arrest and as an inventory search prior to towing. *Id.* at 27. The United States Court of Appeals for the Fourth Circuit affirmed the vehicle search as incident to arrest under *Belton* and found it unnecessary to address the inventory search issue. JA 74-75 (325 F.3d at 196). The court rejected as dangerous and unworkable Thornton's theory that a *Belton* search cannot be undertaken unless the police initiate contact with the suspect before he exits his vehicle. JA 72 (325 F.3d at 195). The court instead ruled that Thornton's recent occupancy of the vehicle and his physical proximity to it at the time of his arrest justified the search:

> The conceded close proximity, both temporally and spatially, of Thornton and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless. Accordingly, we hold that Officer Nichols lawfully searched Thornton's automobile incident to the arrest.

JA 72 (325 F.3d at 196).

SUMMARY OF THE ARGUMENT

In *New York v. Belton*, the defendant was arrested after exiting his vehicle. This Court upheld a search of the vehicle's passenger compartment, stating that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460. This Court grounded its holding on the historic rationales underlying the search-incident-to-arrest doctrine – officer safety and preservation of evidence – and declared that in this "category of cases," the potential dangers to police officers and evidence are presumed to exist in every instance. *Id.*

The Court of Appeals for the Fourth Circuit correctly upheld the search of Thornton's car under *Belton*. Thornton's proposed "contact-initiation" rule – that *Belton* does not apply to a recent occupant of a car unless the arrestee exited the car *after* police contact – places an arbitrary limit on *Belton* that is entirely divorced from, and at war with, *Belton*'s rationales. A recent occupant of a vehicle can just as easily grab a weapon or evidence from the interior of a car whether or not he exited the vehicle after police contact. Indeed, the proposed initial-contact rule would compromise police security and surveillance by forcing or encouraging officers to clearly announce their presence to a suspect and/or to rapidly approach a suspect's vehicle, even when doing so is contrary to sound law enforcement practice. An initial-contact rule would also demand a subjective and unworkable inquiry into an arrestee's motive for exiting a vehicle and would foster greater uncertainty in an area where predictability is of paramount importance.

Rather, as the court of appeals correctly reasoned, *Belton* applies whenever a vehicle's passenger compartment is – arguably and generally – "within the area into which an arrestee might reach in order to grab a weapon or evidentiary item." Nothing about securing an arrestee in a nearby police vehicle – a common and routine police procedure used in Thornton's case – removes an arrestee from *Belton*'s scope. The factors that justified the search in *Belton* are equally applicable here: the peculiar dangers of vehicle stops and arrests, the threat that arrestees – or nearby confederates or onlookers – pose in such situations, the need for a bright-line rule applicable to everyday arrest scenarios, and the lesser privacy interests associated with automobiles.

ARGUMENT

The Court of Appeals Correctly Rejected Thornton's Proposed "Contact-Initiation" Rule in Favor of the Recent-Occupancy Test That *Belton* Embodies.

The court of appeals correctly rejected Thornton's proposed "contact-initiation" rule. *Belton* does not require the police to warn a suspect of their presence before arresting him, regardless whether he is in or out of his vehicle at the time of the arrest. Instead, a suspect's recent occupancy of the vehicle at the time of arrest, without more, justifies a *Belton* search. As the court of appeals pointed out:

> [T]he limitation on the *Belton* rule that Thornton urges could encourage individuals to avoid lawful searches of their vehicles by rapidly exiting or moving away from the vehicle as officers

> approached. Surely, police officers should not have to race from their vehicle to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search.

JA 73 (325 F.3d at 196) (citations, internal quotation marks, and brackets omitted).

The court of appeals correctly refused to add an arbitrary and dangerous "notice" requirement to the straightforward *Belton* rule. Whether the police have warned or attempted to warn the suspect of their presence before arresting him inside or outside the vehicle is irrelevant. Nothing justifies making a suspect's actual or constructive awareness of the police a factor in implementing *Belton*.

Thornton contends that subjectivity – the suspect's state of mind before exiting his vehicle – plays no role in a contact-initiation analysis. Pet. Br. at 29 & n.6. He asserts that whether a person exits a vehicle voluntarily or in response to a police contact is "irrelevant" in that it "does not introduce a subjective component into the [contact-initiation] rule." *Id.* According to Thornton, all that matters is that the police attempt to make contact before the suspect gets out of the automobile – a "purely factual," nonsubjective test. *Id.*

Thornton's assertion is illogical. What legitimate purpose could a warning requirement serve other than to make the suspect aware of the police? Surely, if the police must "signal confrontation," they must do so in good faith, i.e., in a nonperfunctory manner intended to get the suspect's attention and convey to him that the signaled "confrontation" is a police contact. Why impose a warning

requirement if its ostensible purpose is, as Thornton concedes, "irrelevant"?

Even in cases where an officer's actions might fail to achieve actual (subjective) awareness in the suspect but would objectively satisfy Thornton's attempt-to-warn requirement, the suspect's actual awareness of the police would be "irrelevant" only because his *constructive* awareness would supplant it. In other words, if an officer's actions constitute a bona fide attempt to effect a warning, then the suspect necessarily becomes *constructively* aware of an impending encounter with the police. Otherwise, a warning requirement is meaningless, lacking any legitimate purpose. Thus, inevitably, the suspect's state of mind before exiting the vehicle is a component of Thornton's rule, regardless whether the evidence of a pre-exit "contact" supports actual or constructive awareness of the police.

The proposed contact-initiation rule contravenes *Belton*'s purposes by requiring police to "signal confrontation" before an individual alights. The requirement is arbitrary because it rests on a false distinction among occupants based on their subjective or constructive states of mind. It is dangerous because signaling confrontation will increase the risk, particularly in cases like Thornton's, where the suspect is aware of his criminal status and has a weapon in the automobile. Conducting the arrest outside the automobile achieves the same safety objectives regardless whether the police have attempted to warn the occupant that he is about to encounter a police officer.

The court of appeals properly rejected Thornton's proposed rule. The criteria that trigger *Belton*'s implementation are purely objective: when the arrest

occurs in close proximity to the individual's occupancy of the vehicle, the police may contemporaneously search the passenger compartment incident to the arrest. Because Thornton was a recent occupant within the meaning of *Belton* when he was arrested and the search was contemporaneous with that arrest, the search was valid.

A. Belton Forged a Unique Rule for Automobile Searches Incident to Arrest By Extending *Chimel v. California*'s "Immediate Area of Control" Concept to Encompass a Vehicle's Passenger Compartment.

In *Belton*, a police officer stopped a car for speeding, and while Belton and the other three occupants were still in the car, he developed probable cause to arrest them for possession of marijuana. 453 U.S. at 455-56. He ordered them out of the car, arrested them, and secured them in "four separate areas of the Thruway." *Id.* at 456. He searched each of them and then returned to the automobile and searched its passenger compartment, finding cocaine in Belton's jacket. *Id.*

This Court upheld the vehicle search, holding that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* at 460. Although the Court used the term "occupant" in stating its holding, the Court's statement of the facts made clear that Belton was outside the vehicle when he was arrested. *Id.* at 454. The Court's statement of the issue alluded to recent occupancy, *id.* at 460, and the opinion acknowledged that Belton "*had been* a passenger just before he was arrested," *id.* at 462 (emphasis added). In other words, the Court recognized

that at the time of Belton's arrest, he was no longer an occupant of the vehicle but a recent occupant.

1. *Belton* created a bright-line rule under which arrest rather than pre-exit police contact authorizes the search.

The starting point for the Court's analysis in *Belton* was the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Id.* at 457 (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). In *Chimel*, the Court held that an officer who arrests a person in his home may search incident to the arrest the area within the person's "immediate control," that is, the area within which the person could reach a weapon or destructible evidence. 395 U.S. at 763. In *Belton*, the Court noted that lower courts had found no workable definition of the area within the arrestee's immediate control "when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." 453 U.S. at 460. The Court also noted that many courts had struggled with the recurring question "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it.*" *Id.* at 459 (emphasis added). Recognizing that *Chimel* had "established that a search incident to an arrest may not stray beyond the area within the immed ate control of the arrestee," *id.* at 460, the Court set out to "determine the meaning of *Chimel*'s principles in this particular and problematic [context]," *id.* at 460 n.3 (emphasis added).

This Court grounded *Belton* on the historic rationales underlying the search-incident-to-arrest doctrine: officer safety and preservation of evidence. *Id.* at 457-59; *see also Knowles v. Iowa*, 525 U.S. 113, 116-17 (1998); *United States v. Edwards,* 415 U.S. 800, 802-03 (1974); *Chimel,* 395 U.S. at 762-63; *Preston v. United States,* 376 U.S. 364, 367 (1964); *Agnello v. United States,* 269 U.S. 20, 30 (1925). The need to disarm suspects and protect evidence makes it reasonable for police officers to search the person of the arrestee and the area within which he might obtain a weapon or evidentiary items. *Chimel*, 395 U.S. at 766, 768; *cf. Terry v. Ohio*, 392 U.S. 1, 19 (1968) (warrantless search must be justified by the circumstances permitting its initiation).

The Court observed in *Belton* that when "[an] arrestee is [a car's] recent occupant," the passenger compartment is "generally, even if not inevitably, within the area into which [the] arrestee might reach in order to grab a weapon or evidentiary ite[m]." 453 U.S. at 460 (citation and internal quotation marks omitted). Recognizing and adopting that generalization enabled the Court to "establish the workable rule [that] this category of cases requires." *Id.* The Court's express recognition in *Belton* that automobile searches incident to arrest comprise a category of their own finds support throughout the Court's Fourth Amendment jurisprudence, which has recognized that persons have a lesser expectation of privacy in automobiles. *See, e.g., Wyoming v. Houghton*, 526 U.S. 295, 303 (1999) (car searches intrude much less upon personal privacy and dignity than searches of persons because of the everyday exposure of automobiles and their contents to public view, police regulation, and potential involvement in traffic accidents); *California v. Carney*, 471 U.S. 386,

390-92 (1985) ("ready mobility" and pervasive regulation result in a reduced expectation of privacy in motor vehicles); *Almeida-Sanchez v. United States*, 413 U.S. 266, 279 (1973) (Powell, J., concurring) (car searches are "far less intrusive on the rights protected by the Fourth Amendment than the search of one's person or of a building"). The reduced expectation of privacy in an automobile is "diminished further when the occupants are placed under custodial arrest." *Robbins v. California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring), *overruled by United States v. Ross*, 456 U.S. 798 (1982).

Viewing custodial arrests of recent occupants of automobiles as a special "category of cases," this Court specifically rejected case-by-case examination of the reasons supporting a search incident to arrest, deciding instead that the recent occupant's lawful arrest, without more, justifies the search. *Belton*, 453 U.S. at 459-60 (citing *United States v. Robinson,* 414 U.S. 218, 235 (1973)). In *Robinson*, the Court stated:

> The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. . . . [A] search incident to the arrest requires no additional justification. . . .
>
> . . . Since it is the fact of custodial arrest which gives rise to the authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the [defendant] or that he did not himself suspect that [the defendant] was armed.

414 U.S. at 235-36; *see also Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) ("[W]e have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review.").

Under *Belton*, the dangers to police officers and the need to preserve evidence in the vehicle are *presumed* to exist when officers are arresting the recent occupants of automobiles. 453 U.S. at 461; *Bailey v. State*, 12 P.3d 173, 177 (Wyo. 2000); *cf. Knowles*, 525 U.S. at 116-17 (while the "legitimate and weighty" concerns for officer safety and the need to preserve evidence justify a search of the vehicle in the case of a custodial arrest, they are insufficient to presumptively justify a search of the vehicle during a routine traffic stop when the occupant merely receives a citation).[1] Thus, the arrest itself is the triggering mechanism of a vehicle search incident to a recent occupant's arrest, not the police officer's initiation or

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[1] *Knowles* established that *Belton* does not apply when the occupant is cited but not arrested. In *Belton*, the Court presumed that concerns for officer safety and the need to preserve evidence are present in every custodial arrest, obviating case-by-case analysis. 453 U.S. at 461; *Bailey*, 12 P.3d at 177. In *Knowles*, the Court determined that those concerns are either absent altogether or present to a lesser extent when an occupant is merely cited. 525 U.S. at 118-19. Thus, only a custodial arrest triggers a *Belton* search, and a citation is not the functional equivalent of an arrest. *Knowles* did not modify the *Belton* rule, but simply declined to apply it to situations other than custodial arrests. *Bailey*, 12 P.3d at 177; *Polke v. State*, 528 S.E.2d 537, 540 (Ga. App. 2000). It is therefore consistent with the States' argument that arrest alone triggers a *Belton* search.

attempted initiation of contact before the individual alights from the vehicle or the existence of any actual danger in a particular case. *See Robinson*, 414 U.S. at 235 ("It is the fact of the lawful arrest which establishes the authority to search. . . . "). The likelihood that an arrestee will lunge for a weapon in a vehicle that he recently occupied does not vary according to the circumstances under which he exited the vehicle. As this Court has emphasized, "[t]he danger to the police officer *flows from the fact of the arrest*, and its attendant proximity, stress, and uncertainty." *Id.* at 234 n.5 (emphasis added); *see also Washington v. Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Thus, regardless *why* an individual gets out of his car, "the 'bright line' that [the Court] drew in *Belton* clearly authorizes [a search of the car's passenger compartment] *whenever* officers effect a custodial arrest." *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983) (emphasis added).

2. *Belton*'s bright-line rule minimizes the risks inherent in arresting recent occupants of automobiles.

Belton's bright-line rule permits police officers to arrest a recent occupant outside the vehicle and to secure him away from it before conducting the search. This avoids the greater potential dangers involved in attempting, in the name of *Chimel*, to conduct the arrest and the search while the occupant is in the automobile, which in many instances the police would technically be able to do. *See State v. Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999) ("Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from

getting out of the vehicle in order to conduct a valid search."); *State v. Gonzalez*, 487 N.W.2d 567, 572 (Neb. App. 1992) (same).

Belton's requirement that the search be contemporaneous with the recent occupant's arrest, 453 U.S. at 460, does not preclude law enforcement officers from exercising their judgment to reduce the risks associated with the arrest. *See, e.g., United States v. Doward*, 41 F.3d 789 (1st Cir. 1994). In *Doward*, the arrestee's daughter, herself subject to an outstanding arrest warrant, unexpectedly emerged from the gathering crowd and attempted to intervene during a *Belton* search after the arrestee had been secured in a patrol car. 41 F.3d at 791-93 & n.5. In upholding the search, the federal appellate court noted that the potential for such unpredictable developments "vindicate[s] the *Belton* rationale" and rejected a limitation on *Belton* that would "immerse the courts in second-guessing security decisions made by law enforcement officers in rapidly evolving circumstances." *Id.* at 793 & n.5.

No procedure eliminates the danger inherent in an arrest. Even arrestees secured in a patrol car, as Thornton was, can escape and threaten officers or destroy evidence. *See, e.g., Plakas v. Drinski*, 19 F.3d 1143, 1144-45 (7th Cir. 1994) (suspect handcuffed in back seat of squad car escaped from squad car and later confronted police); *United States v. Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir. 1993) (citing incidents in which handcuffed arrestees killed police officers). But this Court wisely forged a rule in *Belton* that minimizes those dangers, thereby ensuring a much higher degree of safety in arrests effected in close proximity to automobiles. Conducting the arrest outside the automobile achieves the same safety objectives

whether or not the occupant exits in response to a police contact.

B. The "Contact-Initiation" Rule That Thornton Proposes Is Untenable Because It Threatens Rather Than Fosters Public Safety and Frustrates *Belton*'s Purpose – to Provide a Safe, Bright-Line Standard Procedure for Police to Follow.

1. The "contact-initiation" rule is arbitrary and dangerous.

In arguing that *Belton* applies only where the police signal, warn, or otherwise confront the occupant before he exits the vehicle, Thornton proffers an arbitrary and dangerous limitation that contravenes *Belton*'s reasoning and its safety-oriented purposes. His proposed rule blurs the bright-line recent-occupancy test beyond any predictable, consistent applicability and dramatically increases the dangers inherent in arrests involving occupants of automobiles. The proposed rule poses an arbitrary and dangerous dilemma for law enforcement officers: they must decide, in the heat of the moment, whether to somehow "signal confrontation" while the occupant is still in the vehicle or to forego a *Belton* search in the event that the occupant alights "unsignaled" or "unconfronted."

This warning requirement fosters gamesmanship. It arbitrarily limits *Belton*, accomplishing nothing beyond giving drivers and passengers a head start to engage in dangerous conduct such as stepping on the accelerator, grabbing a firearm, or destroying evidence. *See Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) ("[W]here the automobile's owner is alerted to police intentions . . . , the

motivation to remove evidence from official grasp is heightened."). In declining to impose Thornton's proposed, pre-exit confrontation rule, the court of appeals observed that it would be unwise to force police officers to choose between preserving evidence and protecting themselves and others from potential violence:

> [W]hen encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight. Mandating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others. We decline to require officers to make this choice.

JA 72-73 (325 F.3d at 195).

Not every occupant will respond violently to "signaled confrontation" or engage in a dangerous attempt to flee upon becoming aware of the police, but many will. Police officers in the field cannot be expected to foresee which occupants are so inclined. Every citizen is presumed to know what conduct the criminal laws proscribe. *See Atkins v. Parker*, 472 U.S. 115, 130 (1985) ("All citizens are presumptively charged with knowledge of the law."). Thus, an occupant who has committed a criminal offense – Thornton had marijuana and cocaine in his pockets and an illegal gun under his seat in the car – presumably knows that he is subject to arrest at any time. Under such

circumstances, where the individual may well be primed to flee or violently resist arrest, an obligatory warning signal is not only superfluous but dangerous.[2]

A "contact-before-exit" requirement is also a purely arbitrary limitation because it assumes a false distinction between occupants who are aware of the police and those who are not. Any person subject to arrest while in a car is potentially dangerous, precisely because he presumably knows his status. In Thornton's case, the officer suspected before Thornton alighted that he might be subject to arrest for driving a stolen vehicle, but in many instances the police will not have such information until after the occupant is out of the vehicle. Precipitation or heavily tinted windows, for example, could conceal ongoing illegal activity or a wanted person's identity until he steps out of the vehicle. In terms of public safety, officer safety, and evidence preservation, there is no difference between a driver or passenger whom the police "stop," "contact," "signal," or otherwise challenge while he is still in the vehicle and one whom the police do not "stop," "contact," "signal," or otherwise challenge until after he gets out of the vehicle – except that "signaling confrontation" may well escalate the risks. For example, a person bent on

[2] Again, although Thornton insists that a suspect's actual (subjective) awareness of the police before exiting his vehicle is "irrelevant," Pet. Br. at 29 & n.6, a pre-exit warning requirement has no legitimate purpose other than to make the suspect aware of the police. A mandatory attempt to make contact is likely to succeed if implemented in good faith, thus increasing the risk and preventing police officers from exercising discretion in deciding whether to announce their presence before the suspect exits the vehicle. Therefore, this Court should not discount the subjectivity inherent in Thornton's proposed rule.

evading arrest is more likely to emerge brandishing a weapon when forewarned of police officers' presence. Thornton had a handgun in his car. His proposed pre-exit warning rule does nothing but increase the potential danger to everyone concerned.

This Court should defer to police officers' training and discretion in determining how to conduct an arrest – either by "signaling confrontation" while the individual is in the car or by avoiding doing so until after the person gets out, depending on the circumstances. *See State v. McLendon*, 490 So. 2d 1308, 1309 (Fla. App. 1986) (*Belton* search upheld where undercover officer did not announce his presence until it was safe to arrest murder suspect inside a building, twenty to thirty feet from the door of the suspect's car). To hold otherwise would only foster gamesmanship – ensuring that the occupant has a head start on evasive action.

A police officer cannot know exactly when, why, or at what rate of speed an occupant will exit a vehicle. Consequently, if Thornton's proposed rule were adopted, officers who for whatever reason had not "signaled confrontation" might make an otherwise unnecessary, aggressive advance upon a moving or stationary vehicle to prevent its occupants from becoming "pedestrians." *See Wanzek*, 598 N.W.2d at 815; *Gonzalez,* 487 N.W.2d at 572. A pre-exit confrontation rule accomplishes nothing but escalated risk.

The legality of a vehicle search incident to a recent occupant's valid arrest should not turn on whether the individual was actually or constructively aware of the police before he exited the vehicle. Thornton's approach creates the very problems for police and courts that *Belton*

sought to avoid. Any "awareness of the police" test is antithetical to undercover police work. The whole idea of undercover law enforcement activity – particularly arrests by undercover officers – is to avoid announcing police presence before apprehending the offender. It would not be in the public's interest to force undercover officers to elect whether to announce their identity prematurely in compliance with Thornton's pre-exit confrontation rule or to forego a *Belton* search by remaining incognito until they can physically detain the person after he exits the vehicle.

2. Thornton's proposed rule will foment confusion among officers in the field and invite endless suppression-hearing litigation on subjective minutiae that would be irrelevant under an objective recent-occupancy test.

Even where police officers are in uniform, a rule requiring case-by-case determinations whether the police accomplished a pre-exit "confrontation" is certain to spawn confusion among law enforcement personnel, generate unwarranted minitrials on subjective factual minutiae, and result in additional inconsistent legal rulings nationwide. Trial courts will be burdened with minitrials on arrestees' and police officers' motivations and their actions in furtherance thereof in virtually every instance in which the government relies on *Belton*. Along with the inevitable inconsistent results, the proposed initial-contact rule will cause substantial additional expenditures of time and resources due to the circumstantial nature of state-of-mind evidence.

This case exemplifies the unworkability and subjective nature of an initial-contact rule. The officer who arrested Thornton testified that he thought that Thornton

was aware from the outset that he was a police officer because although he was driving an unmarked car, he was in uniform and Thornton appeared to be driving evasively, avoiding pulling alongside his car. JA 9-10. The officer pulled in behind Thornton's car as soon as Thornton stopped in the parking lot. Did immediately pulling in and stopping behind Thornton's car, combined with Thornton's apparent ongoing awareness that the person following him was a policeman, amount to an "initial contact" before Thornton alighted, even though the officer had not overtly "signaled confrontation"? If making the suspect aware of a policeman's presence before he alights is the ostensible purpose of the proposed confrontation requirement, could reasonable jurists find that the requisite actual or constructive awareness had been achieved in Thornton's case? Some might say yes and some no, as a finding of fact, while others might rule based on sheer formalism: no overt warning, no compliance. In cases like Thornton's, where flashing lights and sirens are not employed, inconsistent results would be inevitable.

Thornton's proposed rule invites defendants to perjure themselves at suppression hearings by denying any actual pre-exit awareness of the police, thereby requiring the State to establish constructive awareness. No rule or standard of review should be based upon a criminal defendant's after-the-fact averments about his mental processes. *See State v. Medrano*, 914 P.2d 225, 227 (Ariz. 1996) (murder defendant's self-serving testimony about his mental state at the time of the offense was "subject to skepticism"). A rule based on a person's actual or constructive awareness of the police invites litigation concerning an individual defendant's physical or mental condition, including expensive expert testimony on those matters.

Disputes will arise concerning vision, hearing, and mental acuity, as well as external influences on perception such as intoxication, weather conditions, lighting, ambient noise, and the physical characteristics of the arrestee's vehicle – facts that are irrelevant under a recent-occupancy analysis.

Disputes will also arise as to whether certain actions by the police were intended to constitute "contact" or "confrontation." But police officers' subjective intentions rarely factor into Fourth Amendment analyses. *See Ohio v. Robinette,* 519 U.S. 33, 38 (1996) (objective circumstances of traffic stop allow officer to order driver out of car, "subjective thoughts notwithstanding"); *Whren v. United States*, 517 U.S. 806, 811-13 (1996) (stating that this Court is "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"); *Robinson,* 414 U.S. at 236 & n.7 (availability of "search incident to arrest" for officer safety does not depend on the officer's subjective mind set); *see also Scott v. United States,* 436 U.S. 128, 138 (1978) ("[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.").

Police should not be required to memorialize what they intended or attempted to do to get an occupant's attention while the individual was in the car. Nor should officers be required to divine an individual's motivation for exiting the vehicle. When multiple officers are involved, they may not agree on the arrestee's motivation. Further, when a vehicle contains multiple occupants, each individual could assert a different reason for exiting the vehicle,

complicating the situation for the police and the courts. Moreover, a rule based on the occupant's actual or constructive state of mind invites dissimulation – pretending to exit the vehicle "voluntarily" although aware of the police.

Instead, officers should focus on the timing and location of the arrest in relation to the arrestee's occupancy of the automobile. Otherwise, the validity of many searches will remain anybody's guess until long after the fact – when trial courts undertake to sort out arrestees' and police officers' motivations and beliefs and to determine, where contested, the precise timing of any "confrontation" warnings vis-a-vis the occupants' exits from their vehicles.

Under Thornton's contact-before-exit rule, nearly limitless nuances would frustrate the police and the courts. For example, with respect to the pre-exit component, would an individual be deemed "in" or "out" if he has one foot in the vehicle and one on the ground at the instant of initial police contact? Would that depend on whether some part of his body was still touching the seat? What if he has both feet on the ground but the door is open and he is leaning into the passenger compartment – or just reaching in? What if the door is closed but he is leaning or reaching in the window? Would an arm or hand be enough, or would courts require that all or part of the torso be inside the car? What if the person is sitting on the tailgate of a station wagon or sport utility vehicle but his feet are touching the ground – could he merely stand up to render *Belton* inapplicable? What if the person is standing outside the vehicle but has left the engine running?

Moreover, what would constitute pre-exit contact? Could it be nonverbal, such as a signal by hand, whistle, or flashlight? Or, because the contact-before-exit rule necessarily depends on the suspect's precise physical location at the time of initial contact, would the initial contact have to reflect the officer's present ability to make immediate physical contact? How would an undercover officer readily accomplish a pre-exit confrontation within the meaning of Thornton's proposed rule?

The second prong of Thornton's proposed test – a "reaching distance" restriction – similarly portends additional unwarranted nuances of proof. Pet. Br. at 32-33. Under Thornton's test, would an arrestee's "reaching distance" depend on the length of his arms and legs, his age, and his physical condition? Might a defendant arrested in inclement weather argue that the terrain was so slippery that he could not have lunged toward the car at all? Moreover, Thornton's "reaching distance" concept, like his proposed contact-before-exit rule, encourages flight rather than cooperation with the police. Thornton's rule would give even an unwarned recent occupant who sensed an officer's approach an incentive to distance himself from the automobile and from the officer as quickly as possible. The Court should not interpret *Belton* to encourage such maneuvers. Instead, the Court should apply the standard already embodied in *Belton*, which focuses on the recency of the suspect's occupancy of the vehicle at the time of arrest. Otherwise, given the endless variations in the facts that Fourth Amendment issues inevitably engender, many suppression hearings on *Belton* searches would become extended minitrials on factual minutiae, and police officers' actions would have no predictable legal consequences.

Thornton misconstrues *Belton* by interpreting it to require evidence that the police attempted to "signal confrontation" while the suspect was in the car or that the suspect was aware of the police before he got out. Instead of the individual's actual or constructive awareness of the police before exiting the vehicle or his arrest within a fixed distance from the automobile, it is the mere fact that the individual was arrested while he was a recent occupant of the vehicle that justifies a *Belton* search. Thornton's undeniable recent occupancy is dispositive under *Belton*, justifying the search incident to his arrest. For all the foregoing reasons, this Court should reject Thornton's distortion of the *Belton* rule and uphold the court of appeals' decision.

C. The Only Workable Standard for This Category of Cases Is That the Arrestee's Recent Occupancy of the Vehicle at the Time of Arrest Triggers a *Belton* Search, Without Regard to the Arrestee's State of Mind.

1. This Court intended to articulate a simple, workable standard in *Belton*.

In *Belton*, this Court intended to articulate "a single, familiar standard" that police officers can quickly and consistently apply to the circumstances that confront them: "[W]hen a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460. In announcing that test, the Court stressed that Fourth Amendment rules "'ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are

necessarily engaged'" and should not turn upon "'[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions.'" *Id.* at 458 (quoting Wayne R. LaFave, *"Case-By-Case Adjudication" Versus "Standardized Procedures": The Robinson Dilemma*, 1974 S. Ct. Rev. 127, 141-42). The Court therefore sought to articulate a "straightforward rule, easily applied, and predictably enforced." *Belton*, 453 U.S. at 459.

As this Court later observed, citing *Belton*, implementing Fourth Amendment protections in daily law enforcement activity requires clear, simple, and readily administrable rules:

> Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made. Courts attempting to strike a reasonable Fourth Amendment balance thus credit the government's side with an essential interest in readily administrable rules.

Atwater, 532 U.S. at 347. A workable standard is essential:

> [T]he protection of the Fourth and Fourteenth Amendments can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.

Belton, 453 U.S. at 458 (internal quotation marks omitted). This Court established such a standard in *Belton* and should reject Thornton's attempt to supplant it with an arbitrary, unworkable one.

2. The only viable test is whether the arrest occurred while the individual was a recent occupant of the vehicle.

The only viable test for determining whether *Belton* applies in a particular case is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., in close spatio-temporal proximity to his occupancy of the vehicle. Applying that test in *Belton*, this Court determined that Belton's recent occupancy of the vehicle justified the search incident to his arrest:

> [Belton's] jacket was located inside the passenger compartment of the car in which [Belton] *had been* a passenger *just before* he was arrested. The jacket was *thus* within the area which we have concluded was "within the arrestee's immediate control" within the meaning of the *Chimel* case.

453 U.S. at 462 (emphasis added); *see also Long*, 463 U.S. at 1035 n.1, 1049 n.14 (stating that where an occupant exited the vehicle shortly before the initial police contact, the officers could have searched the car under *Belton* if they had arrested him: "*Belton* clearly authorizes [an automobile] search whenever officers effect a custodial arrest").

Whether an arrestee is a recent occupant of the vehicle at the time of his arrest is a factual inference to be drawn from the circumstances at hand. *See United States v. Cortez*, 449 U.S. 411, 421-22 (1981) (police officers' professional experience is part of "the whole picture"

supporting an inference of possible criminal activity); *Henry v. United States*, 361 U.S. 98, 102 (1959) ("Probable cause [to effect a warrantless arrest] exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."). Such a determination of recent occupancy, based on the totality of the circumstances, is neither novel nor difficult. The "totality of the circumstances" concept is a familiar standard that officers in the field can apply in making the recent-occupancy determination. Police officers are trained to assess probable cause to arrest by considering whether the totality of the circumstances supports a reasonable inference that an individual is engaged in criminal activity. They can easily employ an analogous test when deciding whether to search an arrestee's vehicle under *Belton*.

To determine whether an arrestee is a vehicle's recent occupant within the meaning of *Belton*, officers need only reasonably decide based on their training, experience, and the totality of the circumstances whether the arrest occurred in close spatio-temporal proximity to the arrestee's occupancy of the vehicle. The objective material factors will include, for example, the physical distance between the vehicle and the site of arrest, the time that elapsed between the occupant's exit from the vehicle and his arrest, and any statements that he or other witnesses have made concerning his occupancy of the vehicle. In the uncommon instances where more than minimal time and distance are involved, another factor may be whether the individual created additional delay or distance from the vehicle by attempting to flee. *See United States v. Arango*, 879 F.2d 1501, 1505-07 (7th Cir. 1989) (*Belton* search upheld where defendant, who had fled from the area of the vehicle, was quickly apprehended approximately one block

away); *but see State v. Dean*, 76 P.3d 429, 437 (Ariz. 2003) (suspect who ran from his vehicle knowing police were following him and held them at bay for two hours in a house was not a "recent occupant" for *Belton* purposes).

Thornton's case, for example, is a run-of-the-mill *Belton* situation. Like Belton, Thornton cannot seriously contest his recent occupancy of the vehicle at the time of arrest. The court of appeals found that the time and distance between Thornton's exit from the vehicle and his arrest were de minimis. JA 74 (325 F.3d at 196) (although the record was "not clear as to the precise distance between [the defendant] and his automobile when [the officer] confronted him, the record ... conclusively show[ed] that [the officer saw the defendant] park and exit his automobile and then approached [him] *within moments*") (emphasis in original). Further, because Thornton's state of mind and what the police officer did or did not do to get his attention in the car are irrelevant and because concerns for officer safety remain even when an arrestee is secured away from the car, nothing meaningfully distinguishes Thornton's case from Belton's. *See Plakas*, 19 F.3d at 1145 (suspect handcuffed in back seat of squad car escaped and confronted police); *Sanders*, 994 F.2d at 210 & n.60 (citing incidents in which handcuffed arrestees killed police officers). Thornton's car was properly searched as a contemporaneous incident to his arrest because he was a recent occupant of the car when he was arrested.

Other cases may present more difficult facts. *See, e.g.*, *McLendon*, 490 So. 2d at 1309 (undercover officer waited to announce his presence until it was safe to arrest murder suspect inside a building, twenty to thirty feet from

the suspect's car). But the Fourth Amendment's reasonableness requirement will ensure, just as it does in other categories of search and seizure cases, that the police and the courts implement *Belton* in a manner consistent with *Chimel*'s caution that there must be a "rational limitation" on the scope of searches incident to arrest. *Chimel*, 395 U.S. at 766-67; *see* JA 74 (325 F.3d at 196) ("The conceded close proximity, both temporally and spatially, of [the defendant] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless.").

Admittedly, this Court cannot announce precise boundaries for the recent-occupancy standard, but that does not impair the standard's utility or reasonableness. "No one case . . . is a proper vehicle for identifying the limits of [an] exception." *Oregon v. Kennedy*, 456 U.S. 667, 690 (1982) (Stevens, J., concurring). The value of an overarching standard "lies in [its] capacity for informed application under widely different circumstances without injury to defendants or to the public interest." *Wade v. Hunter*, 336 U.S. 684, 691 (1949). Reasonableness and common sense will establish and preserve rational limitations. *See South Dakota v. Opperman*, 428 U.S. 364, 375 (1976) ("'[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.'" (quoting *Cooper v. California*, 386 U.S. 58, 59 (1967))).

The Court established an objective bright-line rule in *Belton* that can and should be applied in a simple and straightforward fashion, regardless of the suspect's actual or constructive state of mind before getting out of the car. The arrest itself triggers a vehicle search incident to a

recent occupant's arrest, not that the police initiated or attempted to initiate contact before the individual alighted from the vehicle. Applying the *Belton* rule differently would destroy its purposes.

CONCLUSION

For these reasons, the amici States respectfully request that the Court apply the objective recent-occupancy rule it applied in *Belton*, hold that it controls in Thornton's case, and affirm the court of appeals' decision.

Respectfully submitted,

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